

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

) MDL No. 1456  
) Master File No. 1:01-CV-12257-PBS  
) Sub-Category Case No. 1:08-CV-11200  
)

THIS DOCUMENT RELATES TO:  
*United States ex rel. Linnette Sun and Greg  
Hamilton, Relators*  
v.  
*Baxter Hemoglobin Therapeutics and Baxter  
International Inc.*

) Judge Patti B. Saris  
)  
)  
)  
)  
)

**SUPPLEMENTAL DECLARATION OF MARK ALLEN KLEIMAN  
REGARDING THE LATE FILING OF THE RELATORS'  
SUPPLEMENTAL OPPOSITION TO BAXTER'S MOTION TO DISMISS**

I, Mark Allen Kleiman, hereby declare as follows:

I am counsel for Relators Greg Hamilton and Linnette Sun in this matter and, if called upon to do so, could and would testify competently to the following based upon firsthand knowledge.

1. I recently acquired and began using a new laptop computer. I left Los Angeles Tuesday morning for meetings with the Department of Justice in Atlanta, Georgia. I took the new computer (which I had been using for several weeks) with me, intending to complete the briefing of this matter while traveling.

2. While in Atlanta my laptop developed severe and intermittently disabling video driver problems which rendered it impossible to read the screen. Although I am not certain what caused the problems, they developed shortly after I downloaded special file viewing software required to use the deposition transcripts in this case. (I was furnished with the transcripts in a

pdf format as well as something called “ptx”, but the pdf files I was sent were not searchable and could not be converted to be made searchable. Searching the nearly three hundred pages of transcript therefore required a different form of software. My laptop began manifesting problems shortly after I installed it.

3. Upon my return to Los Angeles I worked all through Wednesday night to recreate and revise the (now late) brief.

4. To avoid (or at least minimize) any hardship my tardiness might cause for Baxter’s counsel I immediately emailed Mr. DeLancey a copy of the completed (albeit not fully formatted text of my opposition brief upon completion.

5. I apologize to the Court and to counsel for any inconvenience I have inadvertently caused.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this fourth day of February, 2010, in Venice, California.

**/s/ Mark Allen Kleiman**

Mark Allen Kleiman

## CERTIFICATE OF SERVICE

I hereby certify that I, Mark Kleiman, an attorney, counsel for Relators, electronically filed the foregoing **SUPPLEMENTAL DECLARATION OF MARK ALLEN KLEIMAN REGARDING THE LATE FILING OF THE RELATORS' SUPPLEMENTAL OPPOSITION TO BAXTER'S MOTION TO DISMISS**, with the Clerk of the Court for the District of Massachusetts using the Court's CM/ECF system on February 4, 2010. I also caused a true and correct copy of the foregoing document to be delivered to all counsel of record by electronic service via LexisNexis File & Serve, for posting and notification to all parties. In addition, the individuals listed below were served via U.S.

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